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MAILED

DEC 14 2010

OFFICE OF PETITIONS

In re Patent No. 7,772,240	: DECISION ON APPLICATION FOR
Issued: August 10, 2010	: PATENT TERM ADJUSTMENT and
Application No. 10/568,292	: NOTICE OF INTENT TO ISSUE
Filed: August 14, 2006	: CERTIFICATE OF CORRECTION
Dkt. No.: 463-US-PCT	:

This is a decision on the application for patent term adjustment under 37 CFR 1.705(d) filed October 1, 2010.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

The above-identified application matured into U.S. Patent No. 7,772,240 on August 10, 2010. The patent issued with a patent term adjustment of 320 days. The instant application for patent term adjustment was timely filed within two months of the date of issuance of the patent. Patentees request that the patent term adjustment be decreased from 320 days to 184 days. In this regard, patentees assert that the period of adjustment under 37 CFR 1.702(b) to which the application is entitled is 162 days. Patentees further contest the reduction of patent term of 82 days in connection with the request filed May 21, 2010 and assert that the correct reduction is six days.

37 CFR 1.702

The patent term adjustment under 37 CFR 1.702(a)(1) is 212 days.

The initial period of adjustment pursuant to 37 CFR 1.702(b), or, "B" delay, is 380 days, from February 16, 2009 to March 2, 2010, the application having fulfilled the requirements for early commencement under 35 USC 371(f) on February 15, 2006 and a request for continued examination having been filed on March 3, 2010. As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 16, 2009 and ends on March 2, 2010, the day before the RCE was filed. See, 35 U.S.C. 154(b)(1)(B)(i).

It would appear that patentees have calculated the start of the period of adjustment under 37 CFR 1.702(b) based on the date that is 30 months from the date of priority. As the requirements for

early commencement were satisfied on February 15, 2006, commencement began February 15, 2006 and the period under 37 CFR 1.702(b) began February 16, 2009.

The period of adjustment under 37 CFR 1.702(b) does not include the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C.132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences. See, 37 CFR 1.702(b)(4) and 1.703(b)(4).

Accordingly, the period of adjustment of 380 days under 37 CFR 1.702(b) does not include 212 days, from August 3, 2009, the date that the Notice of Appeal was filed, to March 2, 2010, the day before the date that the RCE was filed.

37 CFR 1.704(c)(10)

Patentees contest the reduction of 82 days in connection with the request filed May 21, 2010. Patentees assert that the correct reduction in this regard is six days.

A review of the correct reduction in this regard is six days, as asserted. The reduction commenced May 21, 2010, the date that the post-allowance request was filed, and ended May 26, 2010, the date that a response thereto was issued.

CONCLUSION

In view thereof, at the time of issuance, the patent was entitled to an overall adjustment of 190 days (212 days under 37 CFR 1.702(a)(1) + 380 days under 37 CFR 1.702(b) – 212 days under 37 CFR 1.704(b)(4) – 190 days of applicant delay under 37 CFR 1.704).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 190 days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,772,240

DATED : August 10, 2010

DRAFT

INVENTOR(S) : Bang-Anderson, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 320 days

Delete the phrase "by 320 days" and insert – by 190 days--